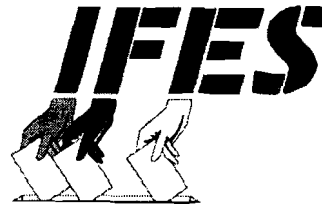


**IFES APPROACHES
TO IMPROVE THE UNIFIED ELECTION CODE
OF THE AZERBAIJAN REPUBLIC**



EXTENDING THE REACH OF DEMOCRACY

2002 - 2003

IFES APPROACHES TO IMPROVE THE UNIFIED ELECTION CODE DRAFT

IFES MAIN RECOMMENDATIONS TO THE UNIFIED ELECTORAL CODE ¹	IFES RECOMMENDATIONS ACCEPTED		
	MARCH 2002	JULY 2002	JANUARY 2003
Definitions			
1. The definition of the term “Announcing (publication)” should be further improved.	—	Yes	
2. The list of definitions should also include Authorized Representatives, Agents, Identification Documents as well as a common term for Candidacy.	—	Yes	
Electoral Administration			
3. Meetings of electoral commissions at all levels must, as a rule, be called 24 hours in advance of the meetings.	Yes		
4. Minutes must be kept for all meetings and at the following the meeting the members of the commission should approve the minutes by a vote.	—	Yes	
5. Electoral commissions on all levels must publish all decisions immediately after the decision was made.	—	Yes	
6. The Code must clearly regulate the limits of the Central Election Commission’s authority to adopt regulations and procedural guidelines about the implementation of the Code and ensure that the regulations and guidelines are not in force until published.	—	Yes	
7. The powers of a member of an electoral commission must be terminated in the case of violation n against the Code after clearly established procedures.	—	Yes	

¹ Many of the recommendations were of technical character, and are not included here.

8. As the current Central Election Commission questions its' right to <u>instruct</u> the lower level commissions, IFES thinks it is important to include provisions on this. The same must apply to the Constituency Election Commissions' right to instruct the Precinct Election Commissions.	—	—	Yes
Composition of Election Commissions			
9. That the composition of the election commissions be reviewed on all three levels in order to ensure broad political consensus and impartiality of the electoral commissions.	Yes	No ²	
10. Public associations in the field of democracy and human rights should be included in the election commissions. Representatives of candidates should be given decisive voting rights.	Yes	No ³	
11. The direct appointment of the lower level commissions by the superior commissions reflecting the composition of these superior commissions should be abolished, ensuring a local base for the composition of the subordinate commissions.	—	Partially	
12. The provision establishing that the Chairman of the election commission always will have to represent the party with the majority in the Milli Majlis should be abolished, and the Chairman should be elected freely amongst the members of the commissions by secret vote.	—	Yes	
13. The level of education as a condition for being appointed to an election commission must be clarified.	Yes		
14. IFES supports the ODIHR/CoE suggestion that the Chairman, Deputy Chairman and Secretary are appointed from different political forces among the members of the election commission. The same applies to the Chairman and Secretary of lower level commissions.	—	—	Yes
Organization of Election Precincts			
15. Further steps must be taken in order to diminish the possibility of establishing voting stations in military areas, by giving clearer definitions for the situation in which the establishment of such voting stations can take place.	Yes		
16. That a unified system for all elections/referenda be found to determine under which constituency the precincts in foreign states are operating.	—	Yes	

² While IFES recommendations on the composition of the election commission were first accepted, they were subsequently removed, apparently because ODIHR/CoE did not concur.

³ See footnote 2.

17. The system of organizing constituencies and particular polling stations for forcefully displaced persons must be addressed in the Code.	—	Yes	
18. In IFES' opinion, the provision in Article 16 goes too far and can be abused because the wording is too general. It should be sufficient that particular voting stations are not established in these cases (Article 35.4.), in order not to deprive these voters of their right to vote.	—	—	Yes
19. Article 36.6 regulates the cases where the rules for appointing election commissions can be set aside, and has been widened compared to previous draft. IFES is unsure of the necessity of this article, and should only be applied secondarily, in the cases where an attempt of forming the commissions according to the general rules has failed.	—	—	Yes
Voters' Registration and Registers			
20. A clarification of "residing mostly" within the territory remains to be defined.	Yes		
21. The method of including forcefully displaced persons in the voters' registers should be included in the Article 43.	—	Yes	
22. The Code should define the identification documents that will serve as basis for registration and right to vote.	—	Yes	
23. A separate section on supplementary voters lists should be considered in order to clarify their use.	—	—	
Nomination of Candidates			
24. The general section should contain only the articles applicable for all forms of elections and candidates.	—	Partially	
25. A common term for candidacy should be sought, explained in the definition and consistently incorporated in the Code. ⁴	—	N.A.	
26. The registration procedure of the initiative group for campaign group of referendum should be simplified.	—	—	Partially
27. The condition limiting the signing in support of more than one candidate be removed.	—	—	Yes
28. That candidates seeking registration be given the right to rectify minor mistakes in the signature sheets within an appropriate deadline.	—	Yes	

⁴ N.A.: Not Applicable. After the August 2002 Referendum, the electoral system has been changed, and recommendations related to the proportional system are no longer applicable.

29. That candidates be given the opportunity to secure registration by a suitable voluntary deposit, paid upon submission of registration documents, which can be paid back upon submission of the required number of valid signatures.	Yes		
30. The voluntary deposit paid upon submission of registration documents, which can be paid back upon submission of the required number of valid signatures, should be reduced significantly.	—	Yes	
31. The required number of signatures supporting nomination of political parties and blocks of political parties to the Milli Majlis should be reduced, in accordance with previous IFES recommendations, to 40,000 (0.5% of the number of voters) for registration of single lists of candidates to the nationwide constituency and abolish the requirement of how many signatures should be collected in each constituency.	Yes	N.A.	
32. The necessity of a provision saying that a political party has to be registered six months before the announcement of the elections in order to register as contender should be reviewed, as it serves no purpose	—	Yes	
33. The number of signatures required in support of candidates for single-mandate constituencies should be reduced.	—	Yes	
34. The provision in Article 57.4 is unnecessary, as 1) It is very difficult to practice (in fact the Central Election Commission currently does not practice the provision), and can be practiced unequally, 2) It can be abused, in the sense that people can intentionally invalidate signatures by signing more than once, or be forced to do so, 3) A voter should not be obliged to expose his preference for one single candidate publicly.	—	—	Yes
35. ODIHR/CoE is of the opinion that there should be no maximum limit for the number of signatures a candidate can collect. IFES supports this, and Article 58.6 should be abolished.	—	—	Yes
36. The candidate or his/her representatives can correct mistakes and errors. The scope of errors that can be corrected is, however, unnecessarily limited. The provision should give access to rectifying any mistake that could be reason for refusal according to Article 60.2	—	—	Yes
37. IFES is still of the opinion that the registration procedure for campaign groups for referendum is too cumbersome and should be amended accordingly.	—	—	Partially

38. The number of signatures required for registering a nationwide campaign- group for referendum has been increased, from 51 000 to 60 000, with minimum 100 signatures from each of at least 60 constituencies. In comparison, a total of 45 000 signatures, with minimum 50 signatures from at least 60 constituencies is enough for registering a candidate for President (Article 181.1, see also comment on this). The same requirement should be applied for campaign groups for referendum.	—	—	Yes
39. Articles 69.2 and 69.3 have been amended, and as a result contradict each other. A clarification is needed, as "candidates... working in state bodies....are released from their employment" (69.2.) whereas according to 69.3. they can continue working.	—	—	Yes
40. What is meant by "persons appointed directly by the President of the Republic of Azerbaijan" who do not have to be released from their position (69.2.)? Does it mean Heads of Executive powers (excom) and members of the Cabinet of Ministers only, or does it include also those appointed by the President with the Milli Majlis approval (Prime Minister, General prosecutor, Ambassadors, judges, high-ranking military)? This also needs clarification. The main rule must in any case be that candidates are released from their positions in state, municipalities and media during the period of campaign. Exceptions must be few and clear.	—	—	Yes
Observers' Rights and the Transparency of the Electoral Process			
41. A general statement of transparency of the work of the electoral commissions is lacking and should be included in Article 38.	—	Yes	
42. Meetings of all levels of the electoral commissions should be open to the public.	—	—	Yes
43. The Code must define clearly who can be accredited as domestic observers. Public associations (non-governmental organizations) in the field of democratization and human rights should have access to observe the elections, this should be clearly stated by the Draft Code and should not be limited by means of funding.	—	—	—
44. There should be no doubt that observers have the right to observe the procedures at all levels on election day, including the work of the Constituency Election Commissions on election day.	—	Yes ⁵	

⁵ However, there exists still restrictions under other legislation.

45. Observers' rights should include the right to be provided with copies of protocols also at each level of the electoral commissions.	—	Yes	
46. IFES strongly discourages the introduction of a fee for copies of protocols.	—	Partially ⁶	
47. The Code should ensure public access to the information received by and extracted from the SAIS	—	—	Partially
48. The distinctions between the rights of persons to observe the pre-election activity of election commissions and other observers are unnecessary. All observers including international observers should have the right to monitor both pre-election and election processes.	—	—	Partially
49. The Central Election Commission should not have the power to limit the right referred to the paragraph 47 above by means of regulations.	—	—	Partially
50. IFES is concerned that registration of all observers will take place in the Central Election Commission. This is unworkable. IFES recommends reducing the number of observers being registered with the Central Election Commission.	—	—	Yes
51. Representatives of mass media should have the right to participate in the meetings of the election commissions. The addition " <i>...in regard with election documents and vote counting process</i> " should be deleted.	—	—	Yes
52. In line with the IFES recommendation that all observers should have the right to be present at election commissions' meetings and processing election documents, all observers, not only those mentioned in Article 40.9, need to be informed.	—	—	Partially
53. According to Article 40.15, an observer must have a badge containing information about the <i>voting station he is assigned to</i> . IFES recommends that this be removed. International observers must in any case have the right to visit any voting station on election day.	—	—	Yes
54. ODIHR/CoE have reservations against including the principles of observation in the Code, and IFES supports that these should better be printed on the back of an accreditation card.	—	—	Yes

⁶ One copy of the protocol will be free of charge for every observer. A fee will be charged only for additional copies.

55. The rights of observers, including international observers, are still very much directly linked to the activities in the precinct election commissions on voting day. The right to be present in meetings of all election commissions should explicitly be included here.	—	—	Yes
56. Some confusion still remains concerning the fees for obtaining a photocopy of a protocol. The Article now says that an observer can ... <i>"make or obtain 1 copy and then photocopy and obtain other copies..."</i> . If the intention is that the first copy can be made or obtained free (without fee), then this must be said clearly.	—	—	Yes
57. The right of international observers to meet with members of election commissions should also be included here.	—	—	Yes
Election Campaign			
58. The campaign period indicated in the Code be increased by at least ten days.	—	Yes	
59. Pre-election campaign materials should be removed from inside and outside of the building of the election commissions and polling stations on Election Day.	Yes		
60. Enforcement mechanisms against candidates violating the Code should be strengthened by including penalties that can be used as reactions against the less serious violations.	—	—	Partially
61. A particular working group within the Central Election Commission with a representative selection of members from the Central Election Commission including representatives from both private and state media outlets should be established.	—	Yes	
62. Candidates whose rights have been violated should be given an explicit right to seek redress directly by the election code.	—	—	Partially
63. Article 125 implying that the “loser” of a referendum will have to pay back all funds received from election commissions be abolished	—	Yes	
64. Contenders of the campaign whose rights have been violated (whose campaign has been harmed by other contenders’ violations) should also have the right to seek redress, by applying to the Central Election Commission or the Court.	—	—	Partially
65. This provision in Article 93.4 now states that returning donations to a donator is a right, not an obligation. The Articles in the Special sections must be harmonized to this fact. (131.1, 161.1, 193.1 and 229.1).	—	—	Partially

Campaign Finance			
66. That the right of registered candidates (all election subjects) to electoral funds allocated from the state budget be clearly defined, to ensure equal conditions to the contestants. There should be clear deadlines for when these funds should be allocated to the candidates, and rules ensuring equal level of the funds for all candidates.	Yes		
Ballot Papers			
67. That ballot papers be numbered in order to improve the ballot security.	Yes		
68. That envelopes and improved protocols should be printed and distributed under the same tight control as ballot papers.	—	Yes	
69. That observers have the right to be present at the printing and transportation of the ballots	—	Yes	
70. IFES recommends that the current procedure of stamping the ballot paper with the Precinct Election Commissions' stamp be included in this article. Signing the ballot should however not be necessary.	—	—	Partially
Voting			
71. That ballot papers be put in an envelope by the voter in the voting compartment before it is placed in the ballot-box. If multiple ballots are found in one envelope then all ballots within that envelope should be held invalid.	—	Yes	
72. The procedure for stamping the ballots upon issuance should be integrated to avoid confusion and increase ballot security.	—	—	Partially
73. The slot of the mobile ballot box should be sealed immediately after mobile voting has ended to prevent voters from entering ballot papers to this ballot box by mistake.	Yes		
74. The de-registration voting card must be left in the possession of the precinct election commission, it is unclear why the provision on this has been taken out of the draft. The voting card must then be attached to the (supplementary) voters' register where the voter has been added, the protocol or in other way be kept together for future verification. The voting cards must follow the protocol on voting results to the Constituency Election Commission and then to the Central Election Commission at the end of the counting and a provision on this be included in articles 106.7 and 107.3.	Partially	No	Partially

75. IFES is disappointed to see that there is no longer a provisions on transparent ballot boxes, as this would have been an efficient remedy to fight balloting fraud. IFES strongly recommends this to again be included in the draft.	—	—	Yes
76. IFES suggests adding the following sentence: “The seals shall be plastic belts, each having a unique number”.	—	—	Yes
77. ODIHR/CoE has correctly pointed out that law enforcement bodies only can be present in voting station to <i>restore</i> law and order, not to preserve law and order. Article 104.14 should be changed. IFES support this view.	—	—	Yes
78. The article has now an addition, where voting shall be stopped when an official is in the voting station during the voting process. If the voting as stopped for more than two hours, the voting station shall be closed. IFES is of the opinion that the provision on closing the voting station after two hours is unnecessary and should be taken out of the draft. The voting station should only be closed in exceptional circumstances if order cannot be restored. A decision on closing a voting station can only be made by higher-level commission (Constituency or Central Election Commission).	—	—	Partially
Counting			
79. The Draft Code needs to seek consistency between the different sections regulating the different elections/referenda	—	Yes	
Protocols			
80. That official protocols be printed in the form of a booklet of carbonated paper, each of the three pages of the official protocol with different colors. IFES also recommends that the protocols should be numbered	—	Yes	
81. Clear procedures for immediate transfer of the protocols and attached obligatory documents from the subordinate commission to the superior commission must be ensured.	—	Partially	
82. The voters' cards submitted to the Precinct Election Commission upon inclusion in voters' lists must also be sent to the Constituency Election Commission, see article 101.8.	—	—	Yes
83. The third copy of the protocol must be posted at the voting station, see comment on article 100.13	—	—	Yes
84. IFES is pleased to see that completion of protocols at the Constituency Election Commission is now regulated in a specific article. However, there are still no regulations on the procedure for receiving the protocols from the Precinct Election Commission	—	—	Partially

85. The voters' cards submitted to the Precinct Election Commission or Constituency Election Commission upon inclusion in (supplementary) voters' lists must also be sent to the Central Election Commission, see Article 101.8	—	—	Partially
86. Article 107.3 states that the protocol and other documents should be sent to the Central Election Commission without any delay. How will this happen, and who will accompany the documents? This would be regulated.	—	—	Partially
87. The third copy of the protocol must be posted at the Constituency Election Commission, see comment on Article 100.13.	—	—	Yes
88. Last sentence of Article 107.5: Along with the new system of numbered protocols a solution must be found concerning the protocol to be used during re-count of votes. The high level of security of the protocol must be maintained.	—	—	Yes
Determination and Publication of Results			
89. Provisions concerning publication of both preliminary and final results must be included in the General Section of the Code	—	Partially	
90. Provisions clearly regulating the final determination of results have to be clearly defined in the Code for all types of elections.	—	Yes	
91. The Constituency Election Commission should also be obliged to publish preliminary results of the elections, shortly after their determination.	—	—	Yes
92. The kind of information that cannot be disseminated from the State Automated Information System must be specified, for example information on voters. IFES is however of the opinion that preliminary results and statistic materials can be published. A clarification is needed.	—	—	Yes
93. The election outcomes and voting results should be published within a few days, for example three days, of the Constitutional Court's approval of the results. The deadline should be linked to the day of the approval, not the voting day as here. A 60 days deadline would in any case be way too late.	—	—	Partially
94. A deadline for publication election results should have reference to the day of determination of the outcome of the elections in the Constitutional Court, and be short. The deadline should be the same for both Milli Majlis elections and Presidential elections. IFES cannot see the reason for having different media-outlets and deadlines for the result of Constituency and Precinct Election Commissions.	—	—	Partially

Election Dispute Resolution			
95. That the Draft Code state in a separate Article early in the Chapter Sixteen that decisions, actions and lack of actions violating political or electoral rights, including the right to vote, can be contested with a superior election commission or with the court.	—	Yes	
96. The superior election commission must accept the complaint if it is within its authority and should be explicitly prohibited from directing complaints to the court, if it has already been filed with the electoral commission	—	Yes	
97. All plaintiffs should have the right to an individual answer to their complaint, and IFES recommends that this be made clear in this Draft Code	—	—	Yes
98. The authority of the superior election commission to investigate a complaint must be clarified.	—	Partially	
99. An increase of the timeframe of the electoral process to allow for handling all complaints or shorter deadlines for dealing with complaints	—	Yes	
100. References in Articles 112 and 113 must be clarified in order to establish in what cases the complaint should be submitted to the court. The main rule must be that the plaintiff should also be able to submit the complaint to the election commission.	—	—	Yes
101. Article 112.4 makes reference to Article 110.3., which is a mistake. IFES is unsure what article the reference should be made to - 112.3. ? This must be clarified in order for IFES to assess the grounds for rejection. In any case the grounds for rejection - and their limitations - must be applicable for both court and election commissions, which is not clear from this article. Also the election commissions should not be able to reject a complaint or direct it to the court, if the complaint has been filed with them.	—	—	Yes
102. The limitations on when the election commission has the right to receive citizens' and officials information are unnecessary. The Article 112.9 should simply read: "The election commission has the right to receive citizens' and officials information and require necessary documents and materials while considering complaints."	—	—	Yes
103. Article 112.11 should include that the decision on the complaint must immediately be communicated to the plaintiff. This would also secure that the plaintiff will get an individual answer to his/her complaint, which has not always happened in the past.	—	—	Yes

104. IFES has also previously expressed concern that there are no alternatives for penalizing a registered candidate that violated the election code other than warning and refusal of registration/de-registration. Alternative penalties, less burdensome should be sought for the less serious violations mentioned in this article.	—	—	Partially
The Possibility to Challenge Preliminary and Final Results			
105. The access to challenge both the preliminary and the final results of the elections needs to be significantly strengthened.	—	Partially	
106. Where the Central Election Commission determines the final results of elections to Municipalities and Referenda, the final result must be able to be challenged in a Court.	—	Yes	
107. The relation between the final determination of the result and Article 114 must be clarified. IFES is of the opinion that there must be an access to challenge both the preliminary and the final result of the election both in higher level election commission and by the courts.	—	—	Yes
108. With reference also to the comments made under article 114, the deadline in Article 138.1 should allow for handling complaints. Alternatively, as ODIHR/CoE proposes, the final result cannot be announced till after all complaints have been decided on.	—	—	Partially
Electoral System of the Elections to Milli Majlis			
109. Instead of 100 deputies elected from single-member constituencies and 25 from party list on a nationwide constituency, the share of deputies elected from party lists on nationwide constituency should be increased to at least 50, decreasing the number of deputies elected from single-member constituencies to no more than 75.	—	N.A.	
110. The number of petition signatures necessary to register a party from 50,000 should be reduced to no more than 40,000 (0.5%).	Yes	N.A.	
111. The threshold for political parties to gain seats in the Milli Majlis be reduced to no more than 5%.	Yes	N.A.	

Special Part			
112. <u>Section six</u> : It would not be unreasonable to include a right for political parties/blocks of political parties who have registered candidates in a significant number of constituencies for elections to the Milli Majlis to be able to present members with consultative voting rights also in Constituency Election Commissions and Central Election Commission.	—	—	Yes
113. <u>Article 137</u> : The previous 25% quorum has been taken out. As quorum must not necessarily be met for elections, a referendum is a different matter. The idea behind a referendum is that the citizens should make the important decision of for example constitutional amendments. In IFES opinion, a 25% quorum needs to be met.	—	—	Yes
114. <u>Article 210.2</u> : This has not been picked up before, but the population-frame must be as follows, in order to avoid overlap: 210.2.2 500 - 999 210.2.3. 1000 - 4 999 210.2.4. 5 000 - 9 999 210.2.5. 10 000 - 19 999 210.2.6. 20 000 - 49 999 210.2.7. 50 000 - 99 999	—	—	Yes
115. <u>Article 225.2.3</u> : The deadline of 25 days in this article contradicts article 69.9., that envisages 3 days after registration. The deadline here can be deleted under reference to article 69.9.	—	—	Yes

IFES MAIN RECOMMENDATIONS TO THE UNIFIED ELECTORAL CODE <u>NOT</u> ACCEPTED BY THE PRESIDENTIAL APPARATUS	NOTES
1. All public associations (non-governmental organizations) in the field of democratization and human rights should have access to observe elections/referenda, this should be clearly stated by the Draft Code and should not be limited by means of funding.	<i>Please note that while IFES recommendations on the composition of the election commissions and the role of public associations in the election commissions were first accepted, they were subsequently removed, apparently because ODIHR/CoE did not concur.</i>
2. The Composition of the election commissions be reviewed on all three levels in order to ensure broad political consensus and impartiality of the electoral commissions.	
3. Public associations in the field of democracy and human rights should be included in the election commissions. Representatives of candidates should be given decisive voting rights.	
4. The voter should be included in the supplementary voters' list upon presenting the de-registration card.	
5. The de-registration voting card should be attached to the supplementary voters' list the voter has been added to.	
6. The voter presenting a voting card less than three days ahead of the elections should be included in the supplementary voters' list. A specific article regulating the use of supplementary voters' list could also solve this.	